

## Chapter 2: MEPA's Purpose, History, and Process in a Nutshell

### CHAPTER SUMMARY

- < At its very core, the EQC views that the policy and purpose of MEPA is to foster:
  - < informed state government decisions;
  - < accountable and open state government decisions;
  - < balanced state government decisions; and
  - < ultimately better state government decisions.
- < Backed by a very broad and unanimous coalition of interests (**Table 2-1**), MEPA was enacted in 1971 by a Republican House (99-0), a Democratically controlled Senate (51-1), and a Democrat in the Governor's Office. The legislation was sponsored by George Darrow, a Republican Representative from Billings.
- < Since MEPA's enactment, successive Legislatures have struggled to achieve a consensus regarding the role of MEPA in directing state environmental policy (**Table 2-2**). Fifty-one pieces of legislation have been introduced that attempted to modify or study MEPA in some way. Twenty-four of those bills were enacted. Nineteen out of the fifty-one bills specifically involved or affected the EQC itself. Proposed legislation, ranging from significantly limiting the scope of MEPA to significantly expanding MEPA's breadth and influence, was frequently introduced and subsequently killed. The Legislature has tended to make incremental changes to the Act over the years.
- < The Legislature has introduced 13 bills over a 29-year period that attempted to exempt specific activities from MEPA review. Ten out of the thirteen bills passed, creating eleven statutory exemptions. Six out of the eleven statutory exemptions are for land management activities specifically.
- < Five pieces of legislation (SB 302 in 1977, SB 388 in 1977, SB 506 in 1979, SB 368 in 1983, and SJR 20 in 1983) were introduced that either would have clarified that MEPA is strictly a procedural statute or would have studied the impacts of the substantive vs. procedural issue. All five pieces of legislation failed. For a more thorough analysis of these bills see **Chapter 6**.

- < The past 29 years of legislative MEPA activity reveal that the scope of activities subject to MEPA review has been incrementally limited, that the Legislature has gradually made it somewhat tougher to litigate MEPA cases, and that the Legislature has clarified that MEPA is a balancing act and that private property considerations should be taken into account. The legislative history also illustrates that attempts to drastically alter MEPA one way or the other have all failed.
- < MEPA requires state agencies to think through their actions before acting. MEPA provides a process that should help ensure that permitting and other agency decisions that might affect the human environment are informed decisions--informed in the sense that the consequences of the decision are understood, reasonable alternatives are evaluated, and the public's concerns are known.
- < MEPA compels state agencies to involve the public through each step of the decisionmaking process. The underlying premise of the public participation requirement is government accountability. MEPA requires state government to be accountable to the people of Montana when it makes decisions that impact the human environment. **Chapter 9** of this report is dedicated to analyzing public participation in the MEPA process.

# Chapter 2: MEPA's Purpose, History, and Process in a Nutshell

## What is the Purpose of MEPA?

The purpose of MEPA is to declare a state policy that will encourage productive and enjoyable harmony between humans and their environment, to protect the right to use and enjoy private property free of undue government regulation, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, and to enrich the understanding of the ecological systems and natural resources important to the state (75-1-102, MCA). See **Appendix B** for a copy of the statute.

MEPA is patterned after the National Environmental Policy Act of 1969 (NEPA) and includes three distinct parts. Part 1 is the “spirit” of MEPA. Part 1 establishes Montana’s environmental policy. It requires state government to coordinate state plans, functions, and resources to achieve various environmental, economic, and social goals. Part 1 has no legal requirements, but the policy and purpose provide guidance in interpreting and applying the statute.

Part 2 is the “letter of the law”. Part 2 requires state agencies to carry out the policies in Part 1 through the use of a systematic, interdisciplinary analysis of state actions that have an impact on the human environment.

Part 3 of the Act establishes the Environmental Quality Council (EQC) and outlines the EQC’s authority and responsibilities.

To truly understand MEPA’s purpose, a brief review of the environmental, public participation, and right-to-know provisions of Montana’s 1972 Constitution is necessary. The Legislature enacted MEPA in the spring of 1971 just prior to the Constitutional Convention, which started in November of 1971. The new Constitution was subsequently ratified by Montanans in June of 1972. The language of MEPA is, to some extent, reflected in the Constitution. Noteworthy constitutional provisions include:

**Article II, section 3. Inalienable rights.** All persons are born free and have certain inalienable rights. They include *the right to a clean and healthful environment* and *the rights of pursuing life’s basic necessities*, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, *health* and happiness in all lawful ways. *In enjoying these rights, all persons recognize corresponding responsibilities.* (emphasis added)

**Article II, section 8. Right of participation.** The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

**Article II, section 9. Right to know.** No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

**Article IX, section 1. Protection and improvement.** (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

The purpose of these constitutional provisions mirror, and are intertwined with, the underlying purposes of MEPA. MEPA should facilitate the ability of state agencies to make better decisions. Better decisions should be balanced decisions. Balanced decisions maintain Montana's clean and healthful environment without compromising the ability of people to pursue their livelihoods as enumerated in MEPA and the Constitution. Better decisions should be accountable decisions. Accountable decisions, as required in MEPA, clearly explain the agency's reasons for selecting a particular course of action. Better decisions are made with public participation. Montana's Constitution mandates open government--people have the right to participate in the decisions made by their government. MEPA requires agencies to open government decisions for public scrutiny. The Montana Constitution also recognizes that people have the responsibility to participate in decisions that may affect them.

At its very core, the EQC views that the policy and purpose of MEPA is to foster:

- U informed state government decisions;
- U accountable and open state government decisions;
- U balanced state government decisions; and
- U ultimately better state government decisions.

One of the ultimate questions of the SJR 18 study is whether MEPA is achieving its intended purpose or not. The EQC attempts to answer this question in **Chapter 10**.

## **Why Did Montanans Decide to Enact MEPA?**

Backed by a very broad and unanimous coalition of interests (**Table 2-1**), MEPA was enacted in 1971 by a Republican House (99-0), a Democratically controlled Senate (51-1), and a Democrat in the Governor's Office. The legislation was sponsored by George Darrow, a Republican Representative from Billings. Although the legislative record is sparse in detail, it reflects some of the reasons why MEPA was enacted. Selective statements from the legislative record include:

- U MEPA "states the responsibility of the state".
- U MEPA spells out that "each citizen is entitled to a healthy environment".
- U "The intent of the bill is to establish a working partnership between the executive and legislative branch of state government concerning the protection of the environment".
- U MEPA "would coordinate the environmental facts of the state".
- U "Montana's productive age populace is leaving the state for employment in other states and if we wanted to keep taxpayers in the state, she suggested passage of HB 66 (MEPA)."
- U "A major conservation challenge today is to achieve needed development and use of our natural resources while concurrently protecting and enhancing the quality of our environment."
- U The sponsor of this bill "legislates foreknowledge".
- U MEPA "seeks that often elusive middle ground between purely preservationist philosophy and purely exploitive philosophy, and indeed we must soon find that middle ground".
- U MEPA will "establish a unified state policy pertaining to development and preservation of our environment".
- U "As we guide Montana's development we must use all of the scientific, technological, and sociological expertise available to us. This is our responsibility . . . . We must avoid creating emotionally explosive situations that have occurred in the past, and indeed, are present right now in some of our communities . . . . We must establish a state policy for the environment."

- U "Include people in the decisionmaking."
- U MEPA is "a master plan for the enhancement of our environment and promulgation of our economic productivity".
- U MEPA "commits the state, through its agencies, to consider the environmental consequences of its actions".
- U MEPA "says that Montana should continue to be a wonderful place to live and that development of its resources should be done in such a manner that quality of life will be assured to those who follow".

Unfortunately, the legislative record does not include transcripts from the floor debates in the House or the Senate. The votes are the only indicator of MEPA's support in those debates.

MEPA's almost unanimous bipartisan approval would, on its face, appear to have reflected a true consensus on the direction of the state's environmental policy. However, at the end of the 1971 regular session, MEPA's \$250,000 appropriation was removed from the state budget, leaving Montana with an environmental policy but no means to implement it. Later, during a second special legislative session in the summer of 1971 and after much debate, the MEPA appropriation was restored, but at a lower level--\$95,000. The battle over MEPA's funding indicates some political division surrounding its enactment that was not reflected in the votes on the House and Senate floors.

**Table 2-1. Persons and Interests That Supported or Opposed MEPA During the House and Senate Legislative Hearings in 1971.** (Source: Senate and House Minutes, 1971)

Person/Organization	Supported MEPA	Opposed MEPA
Ted Schwinden, Commissioner of State Lands	X	
R.W. Beehaw, Board of Natural Resources	X	
John Anderson, Executive Officer of the Department of Health	X	
Winton Weydemeyer, Montana Conservation Council	X	
Zoe Gerhart, Citizen	X	
Dennis Meehan, Citizen	X	
Wilson Clark, Professor at Eastern Montana College, Billings/Yellowstone Environmental Council	X	
Jan Rickey, Citizen	X	
Polly Percale, Assistant Professor at Eastern Montana College	X	
Ted Reineke, Eastern Montana College Wilderness Club	X	

Chris Field, Montana Scientist Committee for Public Information	X	
Marilyn Templeton, Gals Against Smog and Pollution (GASP)	X	
Cecil Garland, Montana Wilderness Society	X	
Robert Holding, Montana Wood Products Association	X	
Dorothy Eck, League of Women Voters	X	
Robert Fischer, Montana Chamber of Commerce	X	
Ben Havdahl, Petroleum Industry, Rocky Mountain Oil and Gas Association, Montana Petroleum Association	X	
Don Boden, Citizen	X	
Joe Halterman, Good Medicine Ranch	X	
Calvin Ryder, Citizen	X	
Gordon Whirry, Bozeman Environmental Task Force	X	
R.E. Tunncliff, American Association of University Women	X	
Kirk Dewey, Montana Council of Churches	X	
Pat Calcaterra and Margaret Adams, Montana Sierra Club	X	
Don Aldrich, Montana Wildlife Association	X	
David Cameron, Professor at Montana State University	X	
Mons Teigen, Montana Stock Growers	X	
Jim Posowitz, State of Montana Fish and Game Commission	X	
Frank Griffin, Southwestern Miners Association	X	

## How Have Successive Legislatures Dealt With MEPA Since Its Enactment Over 29 Years Ago?

Since MEPA's enactment, successive Legislatures have struggled to achieve a consensus regarding the role of MEPA in directing state environmental policy (**Table 2-2**). Fifty-one pieces of legislation have been introduced that have attempted to modify or study MEPA in some way. Twenty-four of those bills have been enacted. Nineteen out of the fifty-one bills specifically involved or affected the EQC itself. Proposed legislation, ranging from significantly limiting the scope of MEPA to significantly expanding MEPA's breadth and influence, was frequently introduced and subsequently killed. The Legislature has tended to make incremental changes to the Act over the years. A closer look at the legislative history reveals some interesting trends and highlights.

The Legislature has introduced 13 bills over a 29-year period that attempted to exempt specific activities from MEPA review. Ten out of the thirteen bills passed, creating eleven statutory exemptions. Six out of the eleven statutory exemptions are for land management

activities specifically. Those activities that are now statutorily exempt from MEPA review include:

- U Public Service Commission activities.
- U Legislation.
- U Temporary exemption of oil and gas drilling permits (1987-89).
- U Certain emergency timber sale situations (fire, fungus, insect, parasite, blowdown, etc.) or time-dependent access situations involving timber. DNRC is exempt from MEPA review to the extent that DNRC's compliance with MEPA is precluded by limited time.
- U Issuance of a historic right-of-way deed (subsequently ruled unconstitutional).
- U Certain actions that involve an amendment to a hard-rock mine operating permit (categorical exclusions, administrative actions, ministerial actions, repair and maintenance actions, investigation and enforcement actions, actions that are primarily economic or social in nature, insignificant boundary changes in the permit area, and changes in an operating plan that was previously permitted).
- U The transfer of permits for portable emission sources.
- U A qualified exemption for reciprocal access agreements on state land. DNRC is not required to analyze or consider potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access.
- U A transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies. This does not trigger review under MEPA if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.
- U DNRC's issuance of lease renewals.
- U Nonaction on the part of DNRC or the Board of Land Commissioners. Even though they have the authority to act, this does not trigger MEPA review.

Juxtapose with the above exemptions two bills that passed (HB 576 in 1991 and HB 344 in 1997), which clarified that translocation or introduction of fish species and Montana University System land transactions are specifically subject to MEPA review.



Five pieces of legislation (SB 302 in 1977, SB 388 in 1977, SB 506 in 1979, SB 368 in 1983, and SJR 20 in 1983) were introduced that either would have clarified that MEPA is strictly a procedural statute or would have studied the impacts of the substantive vs. procedural issue. All five pieces of legislation failed. For a more thorough analysis of these bills see **Chapter 6**.

Two bills (SB 288 in 1995 and HB 142 in 1999) passed by the Legislature specifically deal with MEPA litigation issues. These bills clarified that the burden of proof is on the person challenging an agency's decision that an environmental review is not required or that the environmental review is inadequate and that in a challenge to the adequacy of an environmental review, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision. SB 288 also required that a court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law. In addition, HB 142 required that when new, material, and significant evidence is presented to the District Court that had not previously been presented to the agency for its consideration, the District Court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the District Court considers the evidence within the administrative record under review. Immaterial or insignificant evidence may not be remanded to the agency. The District Court must review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review.

Perhaps the most significant clarification in terms of MEPA's purpose and policy occurred with the passage of SB 231 in 1995 (Chapter 352, Laws of 1995). The bill clarified that it is the state's policy not only to encourage productive and enjoyable harmony between humans and their environment, to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, and to enrich the understanding of the ecological systems and natural resources important to the state, but also to protect the right to use and enjoy private property free of undue government regulation. MEPA has always required an economic and social impact analysis, but SB 231 further specified that when agencies conduct that analysis, regulatory impacts of private property rights and alternatives must be considered.

The past 29 years of legislative MEPA activity reveal that the scope of activities subject to MEPA review has been incrementally limited, that the Legislature has gradually made it somewhat tougher to litigate MEPA cases, and that the Legislature has clarified that MEPA is a balancing act and that private property consideration should be taken into account. The legislative history also illustrates that attempts to drastically alter MEPA one way or the other have all failed.

**Table 2-2. MEPA's 29-Year Legislative History**

<b>Date</b>	<b>Bill Number</b>	<b>Bill Sponsor</b>	<b>Bill Title/Description</b>	<b>Bill Disposition</b>
1971	HB 66	Darrow	Establish a state policy for the environment and to establish an Environmental Quality Council and to set forth its powers and duties.	Passed
1971	HB 600	Darrow	Provide funding for the Environmental Quality Council.	Failed
1971	HB 35	Darrow	Appropriate \$7,500 to the Environmental Quality Council for the remainder of the biennium to implement the provisions of MEPA.	Passed
1971	HB 36	Darrow	Appropriate \$87,500 for the operation of the EQC for the biennium ending June 30, 1973.	Passed
1974	HB 882	Shelden	Amend MEPA to require state agencies to adopt fees for EISs.	Failed
1974	HJR 73	Brown, Swanberg, et al	Provide for adequate representation of economic aspects of the total human environment.	Passed
1975	HB 340	Shelden	Authorize state agencies to adopt rules imposing a fee to be paid by an applicant for a lease, permit, contract license, or certificate when an agency is required to compile an environmental impact statement. Enacts sections 75-1-202 through 75-1-207, MCA.	Passed
1975	HB 401	Hager	Revise EQC members' terms, make Governor's representative nonvoting. Public members appointed by the Legislature rather than the Governor.	Passed
1975	SB 332	Graham	Repeal MEPA	Failed
1977	HB 57	Marks	Make consistent the statutes on the compensation and expenses paid to legislators. Amended 75-1-302, MCA.	Passed
1977	SJR 14	Story	Reduce the cost and duplication in the EIS process.	Passed
1977	HB 592	Meloy	Amend MEPA, specify the duties of the Governor concerning environmental affairs; expand MEPA authority similar to that of NEPA.	Failed
1977	HB 662	Nathe	Environmental Policy Planning and Legislation Study; redefine role of the EQC and coordinate environmental planning.	Failed
1977	SB 82	Dunkle	Revise EQC membership; remove public members.	Failed
1977	SB 247	Dover	Delete the option of state agencies to charge fees for EISs.	Failed
1977	SB 302	Roskie	Specify that MEPA does not expand the decisionmaking authority of state agencies.	Failed
1977	SB 314	Hager	Change method of filling vacancies on the EQC; have vacancy filled in same manner as original appointment instead of by Governor.	Failed
1977	SB 388	Hager	Amend MEPA to clarify state agency duties in environmental decisionmaking and provide judicial review.	Failed

1979	HB 815	Nathe	Exempt the Department of Public Service Regulation, in the exercise of its regulatory authority over rates, from the requirements of MEPA. Amended 75-1-201, MCA.	Passed
1979	HB 680	Kraalen	Retain MEPA; abolish the EQC	Failed
1979	SB 246	Hager	Remove public members and Governor from the EQC. Change name.	Failed
1979	SB 506	Roskie	Prohibit expansion of agency decisionmaking authority; authorize the EQC to review legislation for potential impacts.	Failed
1981	HB 682	Kemmis	Abolish the EQC	Failed
1981	SB 282	Dover	Establish a legislative energy and natural resources policy review committee; expand role of the EQC as adjudicator of complaints on resource issues.	Failed
1983	HB 489	Bardanouve	Revise existing code language to conform to Treasury Fund structure terminology. Amended 75-1-205, MCA.	Passed
1983	SB 368	Lee	Amend MEPA to explicitly state that it does not expand agency authority beyond existing authorizations otherwise possessed by boards, commissions, and agencies of the state.	Failed
1983	SB 406	Gage	Exempt the DHES from MEPA in its review of subdivisions; require the department to consider the environmental assessments submitted to local governments by developers under the Montana Subdivision and Platting Act.	Failed
1983	SJR 20	Lee	Request the EQC to conduct an interim study of MEPA; focus primarily on whether or not MEPA should expand agency authority to deny or condition permits because of adverse environmental impacts.	Failed
1985	SB 410	Keating	Declare that the issuance of a permit to drill an oil or gas well is not a major action under the provisions of MEPA.	Failed
1987	SB 184	Tveit	Exempt the issuance of oil and gas drilling permits from MEPA until a programmatic environmental statement is adopted.	Passed
1987	HB 830	Keenan	Exempt environmental reviews from small miner confidentiality provision.	Failed
1987	HB 879	Cobb	Appropriation for a programmatic review of the environmental impacts of oil and gas drilling.	Failed
1989	SB 201	Keating	Extend the exemption of oil and gas drilling permits from MEPA until December 31, 1989, the date by which the board must adopt a programmatic EIS. Amended 75-1-201, MCA.	Passed
1989	SB 327	Keating	Exempt certain state actions from MEPA; allow agencies to find on a case-by-case basis that an exempted action or combination of actions is a major action significantly affecting the quality of the human environment; require agencies to adopt this finding as a declaratory ruling pursuant to the Montana Administrative Procedure Act.	Failed
1991	HB 231	Cobb	Establish a process for delivering reports to the Legislature. Amended 75-1-203, MCA.	Passed
1991	HB 576	Harper	Require an environmental review prior to the transplantation or introduction of a fish species.	Passed

1993	SB 384	Lynch	Revise statutes governing reports to the Legislature; remove the requirement for the EQC to transmit a state of the environment report to the Legislature, the Governor, and the public. Amended 75-1-203 and 75-1-324, MCA.	Passed
1993	SB 320	McClernan	Exempt certain actions from MEPA that involve an amendment to a hard-rock mine operating permit (categorical exclusions, administrative actions, ministerial actions, repair and maintenance actions, investigation and enforcement actions, actions that are primarily economic or social in nature, insignificant boundary changes in the permit area, and changes in an operating plan that was previously permitted).	Passed
1993	HB 599	Grimes	Clarify that the Department of State Lands may not prepare an EIS for an operating permit that will not, as modified by mitigation requirements agreed to by an applicant, significantly affect the quality of the human environment.	Failed
1993	SB 253	Gage	Abolish the EQC and transfer some of its duties to Legislative Services.	Failed
1995	HB 274	Wagner	Exempt certain emergency and limited access opportunity timber sales from MEPA.	Passed
1995	SB 231	Mesaros	Revise the purpose and policy of MEPA to include private property right considerations and the impacts of state government actions. Amended 75-1-102, 75-1-103, and 75-1-201, MCA.	Passed
1995	SB 234	Grosfield	Reorganize the state's natural resource agencies. Amended 75-1-201, MCA	Passed
1995	SB 288	Keating	Clarify the burden of proof for actions in which an agency determines not to conduct an EIS; exempt the Legislature from the provisions of MEPA. Amended 75-1-201, MCA.	Passed
1995	SB 347	Crismore	Authorize the Department of State Lands to negotiate reciprocal access to facilitate the management of isolated state forest lands.	Passed
1995	SB 398	Gage	Generally revise the laws governing the Legislative Branch; eliminate the position of Executive Director and create the position of Legislative Environmental Analyst within the Legislative Services Division; move the duties of the staff to the Council. Amended sections 75-1-201, 75-1-323, and 75-1-324, MCA, and repealed sections 75-1-321 and 75-1-322, MCA.	Passed
1997	HB 132	Knox	Require the Departments of Environmental Quality, Agriculture, and Natural Resources and Conservation to report specific compliance and enforcement information to the Environmental Quality Council. Enacted section 75-1-314, MCA.	Passed
1997	HB 344	Peck	Revise the procedures for University System land transactions and clarify that proposed transactions must comply with MEPA and the Montana antiquities laws.	Passed
1997	HB 607	Grinde	Provide for the issuance of historic right-of-way deeds by the Department of Natural Resources and Conservation.	Passed

1997	HB 475	Cobb	Require the Department of Environmental Quality to assess the use of microbes in EISs for metal mines.	Failed
1999	HB 142	S. Anderson	Clarify the treatment of a transfer of ownership under MEPA; limit a court's scope of review for an action or challenge that an environmental statement or review is not required or is inadequate. Amended section 75-1-201, MCA .	Passed
1999	SB 64	Mohl	Exempt the transfer of permits for portable emission sources from MEPA.	Passed
1999	SJR 18	McCarthy	Request that the Environmental Quality Council conduct a study on MEPA.	Passed
1999	HB 346	Raney	Require that state agencies with the responsibility of issuing a permit, lease, license, contract, or certificate for which an EIS is required provide an annual summary of compliance with mitigation measures, etc.	Failed
1999	SB 413	Grimes	Revise various aspects of MEPA; provide definitions; clarify the requirement that state agencies identify and develop methods and procedures that ensure that presently quantified environmental amenities and values may be given appropriate consideration in decisionmaking; require the director of a state agency commenting on a proposed action to determine the significance of the proposed action; clarify the treatment of a transfer of ownership; limit a court's scope of review for an action or challenge that an environmental statement or review is not required or that the statement or review is inadequate; require an environmental impact statement contractor to post a performance bond.	Failed

## What Is the MEPA Environmental Review Process?

MEPA requires state agencies to think through their actions before acting. MEPA provides a process that should help ensure that permitting and other agency decisions that might affect the human environment are informed decisions--informed in the sense that the consequences of the decision are understood, reasonable alternatives are evaluated, and the public's concerns are known.

MEPA requires state agencies to conduct thorough, honest, unbiased, and scientifically based full disclosure of all relevant facts concerning impacts on the human environment that may result from agency actions. This is accomplished through a systematic and interdisciplinary analysis that ensures the integrated use of the natural and social sciences and the environmental design arts in planning and decisionmaking. This analysis usually takes the form of an environmental assessment (EA) or an environmental impact statement (EIS).

Before making a decision to implement an action that might affect the human environment, MEPA generally requires the agency to generate and organize information, in the EA or EIS, that at a minimum:

- U describes the need for the action or the agency's proposal (purpose and need);
- U explains the agency's intended action (proposed action);
- U discusses other possible options to the proposed action (alternatives);
- U analyzes the potential consequences of pursuing one alternative or another in response to the proposed action (impacts to the human environment); and
- U discusses specific procedures for alleviating or minimizing adverse consequences associated with the proposed actions (mitigation).

**Table 2-3** lists the specific environmental document content requirements of the environmental review process.

**Table 2-3. Environmental Document Content Requirements**

MEPA Rule Requirements	EA	EIS
A description of the proposed action including the purpose and benefits	Yes	Yes
A listing of entities with overlapping jurisdiction	Yes	Yes
Description of current environmental conditions	Yes*	Yes
Description and evaluation of the impacts (including primary, secondary, and cumulative) on the human environment	Yes	Yes
Description and evaluation of growth-inducing or growth-inhibiting impacts	Yes*	Yes
Description and evaluation of irreversible and irretrievable commitments of environmental resources	No	Yes
Description and evaluation of economic and environmental benefits and costs of the proposed action	Yes*	Yes
Description of the relationship between local short-term uses of the environment and long-term productivity of the environment	No	Yes
Description and analysis of reasonable alternatives including the no action alternative that may or may not be within the jurisdiction of the agency	Yes, when alternatives are reasonably available. (EA rules omit jurisdictional language.)	Yes
An explanation of the tradeoffs among the reasonable alternatives	Yes*	Yes
Agency's preferred alternative identified and its reasons for the preference explained	Yes*	Yes
Listing and an appropriate evaluation of mitigation, stipulations, or other control measures enforceable by the agency or another government agency	Yes	Yes
Discussion of any compensation related to the impacts from the proposed action	No	Yes

Listing of other agencies and groups that have been contacted or have contributed to the document	Yes	Yes
Listing of names consisting of those individuals responsible for preparing the document	Yes	Yes
Finding for need of an EIS and, if an EIS is not required, a description of the reasons the EA is the appropriate level of review	Yes	No

\* Note that these rule requirements are not explicitly stated in the EA MEPA rules. However, by their very nature, the EA MEPA rules generally require some form of discussion and analysis here. The scope and depth of the analysis is discretionary.

## How Do State Agencies Inform and Involve the Public in State Decisions That Impact the Human Environment?

MEPA compels state agencies to involve the public through each step of the decisionmaking process. This is accomplished by:

- X      telling the public that an agency action is pending;
- X      seeking preliminary comments on the purpose and need for the pending action (scoping);
- X      preparing an environmental review (categorical exclusion (CE), environmental assessment (EA), or environmental impact statement (EIS)) that describes and discloses the impacts of the proposed action and evaluates reasonable alternatives and mitigation measures;
- X      requesting and evaluating public comments about the environmental review; and
- X      informing the public of what the agency's decision is and the justification for that decision.

The level of public participation is dependent on what type of review the agency is conducting. **Table 2-4** illustrates the procedural differences between an EA and an EIS in terms of discretionary and required MEPA public participation.

**Table 2-4. Public Participation Requirements**

<b>Public Participation Elements</b>	<b>EA</b>	<b>EIS</b>
Is public comment required?	Discretionary (except for mitigated EAs)	Yes
Are there duration requirements for public comment?	Discretionary	Yes (30 days for the DEIS and 15 days for FEIS)
Are draft revisions required?	Discretionary	Yes (DEIS & FEIS)
Is a scoping process involving the public required?	Discretionary (note that if the agency initiates the scoping process to determine the scope of the EA the agency must follow EIS requirements for scoping)	Yes
Are the sources and text of written and oral comments required to be included in the document?	Discretionary	Yes, within the FEIS
Must the agency respond to substantive comments received?	Discretionary (note that the agency must consider comments that are received)	Yes, within the FEIS

The underlying premise of the public participation requirement is government accountability. MEPA requires state government to be accountable to the people of Montana when it makes decisions that impact the human environment. **Chapter 9** of this report is dedicated to analyzing public participation in the MEPA process.